

**ENVIRONMENTAL APPEALS BOARD
CONSENT AGREEMENT AND FINAL ORDER PROCEDURES**

Note: This document was formerly included as an appendix in the Environmental Appeals Board's Practice Manual. The Board has removed the document from the Practice Manual and is making it available as its own separate guidance document, with minor modifications to reflect current practice and to make the submission process more efficient.

Part 22 delegates to the Environmental Appeals Board the authority to ratify, on behalf of the Administrator, consent agreements and final orders (CAFOs) memorializing settlements between the Agency and respondents resulting from certain administrative enforcement actions. *See* 40 C.F.R. § 22.18(b). The Board's authority to ratify settlements initially derived from delegations from the Administrator to the Board delegating the authority to issue consent orders and final orders under specific environmental statutes. *See, e.g.,* Marine Protection, Research and Sanctuary Act (EPA Delegation 3-1-C); Federal Insecticide, Fungicide and Rodenticide Act (EPA Delegation 5-15-B); Clean Air Act (EPA Delegation 7-41-C); Solid Waste Disposal Act (EPA Delegations 8-9-C, 8-27, 8-44); and Toxic Substances Control Act (EPA Delegation 12-2-C). Under the terms of these delegations, the final orders may assess penalties and, in some circumstances, require compliance. These delegations were reflected in the revisions to part 22 when the Board was created.

To assist the Board in performing its ratification authority, starting April 8, 2011, any consent agreement that the Director of the Office of Civil Enforcement (OCE) or Acting Director of OCE is authorized to sign, which does not require concurrence by the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), shall be transmitted to the Board by an action memorandum signed by the Director of OCE or Acting Director of OCE. Any consent agreement that the OECA Assistant Administrator or a representative of an OECA office other than OCE has signed, or consent agreement for which concurrence by the OECA Assistant Administrator is required, shall be transmitted to the Board by an action memorandum signed by either the OECA Assistant Administrator or the Deputy Assistant Administrator for OECA.

The consent agreement and action memorandum (along with a proposed final order and certificate of service) shall be submitted to the Board both in paper form (via hand-delivery or inter-office mail) AND electronically (via e-mail to Clerk_EAB@epa.gov with "CAFO" in the subject line). The action memorandum shall include:

1. A non-CBI copy of the complaint, if one has been filed;

2. A detailed explanation of how the proposed agreement is consistent with the applicable penalty guidelines or, if not, why not; with a brief statement of the facts describing both the allegations of the complaint and how the settlement addresses each of the violations identified;
3. A summary of any human health or environmental concerns presented by the respondent's actions or why there are no concerns;
4. An explanation of how the order addresses the disposition of any substances or wastes identified in the complaint, or identified in the allegations in the consent agreement if no complaint has been filed, including any additional steps, if required, to address any past exposure to the environment;
5. A brief explanation of any past or pending actions involving this same respondent arising out of the same facts;
6. A statement of how the public interest is served by the agreement;
7. Copies of all policy documents relied upon in the assessment of a penalty, or, in the alternative, an identification of where such documents are publicly available;
8. For consent agreements addressing violations under Clean Water Act sections 309(g) and 311(b)(6)(B)(ii) and Safe Drinking Water Act section 1423(c), a copy of the public notice required by 40 C.F.R. § 22.45 (or, in the alternative, an identification of where such document is publicly available), and a statement that the required public notice complies with § 22.45 and identifies all violations that the consent agreement addresses; and
9. A proposed final order with a certificate of service – following the Board's template (attached). At this time, the Board does not serve orders by electronic mail. Please provide the appropriate mailing addresses on the draft certificate of service.

Docket No.

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

So ordered.¹

[Name of Judge]

Judge, Environmental Appeals Board

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges _____, _____, and _____.

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of _____, Docket No. _____, were filed and copies of the same were mailed to the parties as indicated below:

Via Interoffice Mail:

[Name]
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (Mail Code 2248A)
Washington, DC 20460

Via U.S. Certified Mail:

[Name]
[Address]

Annette Duncan, Secretary
U.S. Environmental Protection Agency
Environmental Appeals Board

Dated: _____